IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15791 of 2004

with

SPECIAL CIVIL APPLICATION No 6725 of 2005

TO

SPECIAL CIVIL APPLICATION NO. 6729 OF 2005

WITH

SPECIAL CIVIL APPLICATION NO. 15995 OF 2004

WITH

SPECIAL CIVIL APPLICATION NO. 6723 OF 2005

WITH

SPECIAL CIVIL APPLICATION NO.15724 OF 2004

WITH

SPECIAL CIVIL APPLICATION NO. 6724 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADAV MANOHAR GULABRAO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15791 of 2004

MS PRITI PANDYA for Petitioner No. 1-6

MR KL PANDYA AGP for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR PRASHANT G DESAI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 03/05/2005

COMMON ORAL JUDGEMENT

1. RULE. MR. K.L. Pandya, learned A.G.P. waives service of notice of Rule on behalf of the respondent No.1. Mr. Prasant G. Desai, learned advocate waives service of notice of Rule on behalf of the respondent Nos.2 and 3. Present petition is preferred against the order passed by the respondent No. 2 at Annexure-E dated 7-8-2002 whereby the respondent No.2 has issued general directions on the basis of the letter issued by the respondent No. 1 dated 1-8-2000 wherein it was stated by the respondent No. 1 that for the post of "Vidya Sahayak" eligibility of trained graduate - B.Ed is cancelled. This change in the qualification of the "Vidya Sahayak" made the petitioner disqualified for the post of "Vidhya Sahayak".

2. Heard the learned advocate for the petitioner, the learned A.G.P. for the respondent No. 1 and advocate for the respondent Nos. 2 and 3.

3. Learned advocate for the petitioner submitted that in pursuance of the advertisement the petitioner had applied for the post of "Vidhya Sahayak" and at that time the petitioner was eligible for the said post of "Vidya Sahayak" but subsequent change in the qualification made by the respondent No. 1 the qualification of the petitioner has been affected. The present petitioner is similarly situated person like other candidates who had preferred Special Civil Application Nos. 10446 and 10465 of 2000 which have been allowed by this Court vide order dated 31-8-2004 copy of the judgment thereof is produced at Annexure-F to the present compilation. At para 4.2 of the said judgment dated 31-8-2004 certain directions have been given by this Court to the respondents No. 2 and 3, which reads as under :

"Considering the facts of the case, as well as considering the decisions of the Apex Court referred to above, it is clear that the petitioners were eligible from the date of advertisement and the respondents should have considered them for the post of "Vidya Sahayak".

However, change of Rules during the selection process is not permissible, and, therefore, the respondents will consider the case of the petitioners, if they are otherwise eligible on merits, they should be appointed on the post of "Vidya Sahayak". It is made clear that upper age factor will not come in the way of the petitioners while considering the age of the petitioners by the respondents."

4. Looking to the facts and circumstances of the case, the petitioner is similarly situated person to those petitioners of Special Civil Application Nos. 10446 and 10465 of 2000 and therefore necessary directions may kindly be issued to the respondent Nos. 2 and 3 in this case also.

5. Learned advocate appearing for the respondent Nos. 2 and 3 mainly submitted that the respondents No. 2 and 3 have already acted and reacted as per the directions given by the State Government to the respondent Nos.2 and 3 vide order dated 1-8-2000. In fact, the respondent No. 2 and 3 have never changed any qualification of the candidates - petitioners of the aforesaid petitions. It is the respondent No. 1 who has made certain changes in the candidates' eligibility criteria. The petitioner is similarly situated persons petitioners of the aforesaid two petitions being Special Civil Application Nos. 10446 and 10465 of 2000 which have been decided by this Court vide order dated 31-8-2004 and certain directions have been given to the respondent Nos. 2 and 3 to consider the case of the petitioners in that case.

6. Learned A.G.P. for the respondent No. 1 mainly submitted that for the post of "Vidya Sahayak" there is some change in the eligibility criteria as per the order passed by the State of Gujarat which is produced at Annexure-I to the affidavit-in-reply filed by the respondent Nos. 2 and 3. None the less, if necessary directions are given to the respondent Nos. 2 and 3 to consider the case of the petitioner in accordance with law, the respondent No. 1 has no objection for the same.

7. Having considered the submissions made by the learned advocates for the parties and looking to the order passed by this Court dated 31-8-2004 in Special Civil Application Nos. 10446 and 10465 of 2000 especially at paragraph No.4.2 of the said judgment.

8. Considering the facts and circumstances of the

case and the decisions of the Supreme Court as well as judgment dated 31-8-2004 of this Court rendered in Special Civil Application Nos. 10446 and 10465 of 2000 it is clear that the present petitioner was eligible for the post of "Vidya Sahayak" from the date of the advertisement and the respondents ought to have considered the case of the petitioner. However, change of rules during the selection process is not permissible. Therefore the respondents are directed to consider the case of the petitioner for the post of "Vidya Sahayak" in accordance with law within a period of four weeks from the date of receipt of writ of this Court.

9. For the foregoing reasons, all these petitions are allowed to the aforesaid extent. In all the above petitions, Rule is made absolute to that extent, with no order as to costs.

(D.N. Patel, J.)

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